

REMARKS

I. Status of Claims

Claims 1-92 are pending, and claims 46-92 have been withdrawn. By this amendment, Applicants have cancelled claim 21 without prejudice and amended claims 1, 22-24, 33-35, 37, and 43-45. Support for the amendment to claims 1 and 43-45 can be found in the originally filed specification, for example on pages 13-14, paragraph [038] and original claim 21. The amendments to claims 22-24, 33-35, and 37 correct improper dependencies created from the cancellation of claim 21, and amendments to claims 44 and 45 deleting "wherein said" correct an obvious clerical error. No new matter has been introduced by these amendments.

II. Rejection under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1-6, 19, 20, 39-41 and 43 under 35 U.S.C. § 102(b) as anticipated by German Patent DE 2014628 to Wella AG ("Wella"). According to the Examiner, Wella teaches a composition comprising "2.3% of sodium hydroxide as an alkali metal hydroxide and oxidizing agents as claimed in claims 1-5 and 40-41 . . . or 2% of sodium hydroxide as claimed in claims 6 and 43 . . . , water as claimed in claims 19-20 . . . , [and] dyes as claimed in claim 39" Office Action at 3.

A claim is anticipated under § 102 only if each and every element, as set forth in the claim is found in a single prior art reference. M.P.E.P. § 2131. As evident from the absence of claim 21 in this rejection, the Examiner acknowledges that Wella fails to teach the claimed composition as amended, comprising at least one complexing agent effective for dissociating the at least one hydroxide compound in a sufficient quantity to effect lanthionization of keratinous fibers.

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Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection under § 102(b).

III. Rejections under 35 U.S.C. § 103

A. Wella

The Examiner has rejected claims 7, 8, 44, and 45 under 35 U.S.C. § 103 over Wella. According to the Examiner, Wella “teaches a composition for simultaneous[ly] straightening and dyeing hair comprising 2.0% of sodium hydroxide and oxidizing agents as claimed in claims 7-8 and 44-45 (see abstract and page 6, Example 4).”

Office Action at 3.

In order to establish a *prima facie* case of obviousness, the Examiner must demonstrate, among other things, that the prior art reference or references teach or suggest all of the claim limitations. As discussed above, the Examiner has not established that Wella teaches or suggests a composition comprising at least one complexing agent effective for dissociating at least one hydroxide compound in a sufficient quantity to effect lanthionization of keratinous fibers, as claimed. As no *prima facie* case has been established, Applicants respectfully request withdrawal of the rejection.

B. Au et al.

The Examiner has rejected claims 1-4, 9-28, and 30-42 under 35 U.S.C. § 103 over U.S. Patent No. 5,872,111 to Au et al. (“Au”). The Examiner acknowledges that “[t]he instant claims differ from the reference by reciting a composition comprising at least one hydroxide compound and at least one oxidizing agent wherein the ingredients are presented in a combined amount.” Office Action at 5. The Examiner attempts to cure this deficiency by arguing that “it would have been obvious to one having ordinary

skill in the art at the time the invention was made to make such a composition by combining the ingredients because the reference teaches compositions comprising all the claimed ingredients, and, thus, a person of [] ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results." *Id.*

In order to establish a *prima facie* case of obviousness, however, it is required that the Examiner show some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. M.P.E.P. § 2143. This the Examiner has failed to do in the instant case.

Contrary to the Examiner's assertion, the Au reference does not teach or suggest "compositions comprising all the claimed ingredients." For example, the Examiner has not pointed to any teaching or suggestion in Au directed towards a composition to effect lanthionization of keratinous fibers. In fact, as one of ordinary skill in the art would readily understand, a shampoo composition would not lanthionize keratinous fibers.

Additionally, the Au reference does not teach or suggest a composition comprising at least one oxidizing agent. Instead, the focus of Au is on compositions comprising glycosylamides surfactants and a method of manufacturing these glycosylamide surfactants.

When discussing the method of manufacturing glycosylamides, Au teaches that "[b]leaching is sometimes required but not always necessary, since the compounds of the invention [i.e., referring to glycosylamides] are generally of good color." Au, col. 29, ll. 58-62 (emphasis added). Au then lists hydrogen peroxide, a known oxidizing agent, as a potential bleaching agent. Thus, it is clear that Au uses an oxidizing agent to bleach glycosylamides, which are "the compounds of the invention," and does not

use an oxidizing agent as a potential ingredient in the shampoo composition discussed above.

The Examiner has thus not established that Au teaches or suggests that at least one oxidizing agent may be subsequently added to a composition comprising glycosylamides, such as a shampoo or other hair treatment composition. Contrary to finding motivation to add at least one oxidizing agent to the shampoo disclosed in Au, as the Examiner must find to establish a *prima facie* case, one of ordinary skill in the art would generally find it highly detrimental if the shampoo composition, which Au teaches is a "cleansing composition," (col. 9, ll. 1) resulted in bleached keratinous fibers.

Applicants further point out that it is believed the Examiner has misunderstood the reference by stating that Au "teaches a shampoo composition comprising . . . hydrogen peroxide in the amount of 0.03% to 3%" Office Action at 4. The reference discloses that the bleaching agent may be present "preferably from about 0.03% to about 3%" by weight **of the total reaction mixture**." See Au, col. 30, ll 15-16. When Au says "the total reaction mixture," it is referring to the reaction mixture resulting from the preparation of glycosylamides and **not** the shampoo composition. Thus, the amount of hydrogen peroxide in the final shampoo composition would be far less (assuming *arguendo* any hydrogen peroxide at all remains).

As no *prima facie* case has been established, Applicants respectfully request reconsideration of this grounds for rejection.

C. Au et al. in view of Pyles et al.

The Examiner has rejected claim 29 as obvious over Au in view of U.S. Published Patent Application No. 2001/008630 to Pyles et al. ("Pyles"). According to the Examiner, "the instant claim differs from [Au] by reciting monosodium glutamate as

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[a] specific species of an amino acid." Office Action at 6. The Examiner then concludes that because "Au . . . teaches a composition comprising amino acids as a genus," and "Pyles . . . teaches in analogous art a hair composition comprising sodium glutamate," then one of ordinary skill in the art "would have been motivated to select any of the species of the genus taught by [Au]." *Id.* Applicants respectfully disagree.

As discussed above, Au does not teach or suggest all of the elements of the instant claims, including claim 29, which is dependent upon claim 1. Pyles does not rectify this deficiency, and thus no *prima facie* case of obviousness has been established.

IV. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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